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Internet portals in the Baltic States: legal issues

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The article reviews legal regulation scheme covering various issues of the daily routines in the Baltic States internet portals. The most recent and controversial legal cases are discussed, whereas later general legal regulation is overviewed. The result of this article is identification of the most important issues for internet portals in the legal arena. At the same time legal analysis compares the outcomes to the general human rights principle of freedom of expression and its application in internet.*

According to the latest “Nielsen//NetRatings”, ITU and “C-I-A” data, internet penetration has reached 48,9% in the European Union¹. At the same time local Lithuanian portion using the internet has reached 28,2%. This

number is even higher in Latvia (35,1%) and reaching 49,8% in Estonia². It is evident, that internet as a new communications medium has matured into a commodity available at least to one third of population.

The first network of pan-Baltic internet portals was established in 1999, when Estonian “MicroLink Online” and “Parks LvNet” merged. Although the initial stage was doomed by several conflicts “delfi.ee”, “delfi.lv” and

* Tyrimo medžiaga buvo pateikta pranešime, skaitytame Vilniaus universiteto Komunikacijos fakulteto surengtoje konferencijoje „Komunikacijos ir informacijos mokslai: būklė ir raidos tendencijos“ (Vilnius, 2005 m. spalio 14 d.).

¹ The European Union Internet Statistics were updated on November 9, 2005. Source – <http://www.internetworldstats.com/stats4.htm#eu>.

² Data true for September 2005. Source – <http://www.internetworldstats.com/europa.htm>.

later “delfi.lt” has taken a strong pan-Baltic leadership role, providing the latest news in Estonian, Latvian, Lithuanian and Russian (for Russian speaking population in Latvia and Estonia) languages.

Although “delfi” has become an example of what should be named “internet portal”, some variations do exist. For example, telecommunications operators do invest in their own internet portals – *www.omni.lt*, *www.takas.lt*, *verslo.banga.lt* (in Lithuania), *www.apollo.lv* (Latvia). Another sort of easily accessible source of information – supplements in niche portals. For example, real estate internet portals usually have specific parts dedicated to the latest news, provide segmented packets of information (for example – *www.aruodas.lt*).

The most important thing is that internet portals usually are rated amongst the most popular internet websites. For example, “Gemius Baltic” Lithuanian data show that internet news portals *www.delfi.lt*, *www.omni.lt* constantly take leading positions in the TOP lists.

The Object and Methodology

Although e-commerce still is in the early stages of development in the Baltic States³, nevertheless social relations do transfer onto the new medium. Moreover, relations usually intensify and start evolving into some sort of uninterrupted communications in the virtual arena. These relations and (the most importantly) new social situations, potential areas of conflict will be *the object* of this text. At the same time existent legal regulation, its possibilities to adapt to the new virtual environment provide new challenges for the legal studies;

therefore *the expected results* of this text is to identify the most important areas for an in-depth review, conflict areas, which became evident till the latest.

In order to reach the defined target it is essential to make sure all *methods and tools* are carefully selected, their suitability is proven and conclusions are trustworthy. Therefore we will start with analysis of opinions from proven market experts. In the first place, we will overview opinions from the leading legal experts, investigate their correspondence to the latest issues. That will lead to the identification of “the weakest links” in the regulation mechanism, systematical analysis of legal regulation. Theoretically, it would be already possible to create scientifically sufficient proposals to update existing regulation, renew legal procedures. Moreover, we will review opinions from owners and chief editors of the internet portals, investigate their “top-of-mind”⁴ legal issues.

It is essential to understand, that the conclusions, received after integration of empirical and theoretical issues, will be used for further thorough questionnaires for all main internet portals in the Baltic States and their statistical analysis. But this stage is beyond the scope of the present text.

Legal theory usually covers general mass media issues. The latest source from the legal scholars in the Baltic States is a monographic “Media law” by Lithuanian attorney at law Liudvika Meškauskaitė (Meškauskaitė, 2004). It is supposed to review general legal regulation for mass media and related legal issues ranging from free speech to ownership regu-

³ Hereinafter “the Baltic States” means three independent republics – Estonia, Latvia and Lithuania.

⁴ “top of the mind” (sometimes – TOM) is the methodology to gather information, which is the most important and related to the question in place.

lation. Issues related to internet portals are discussed only as a matter of general internet media regulation.

The principle of free speech and its implementation in the Convention for the Protection of Human Rights and Fundamental Freedoms (further – the Convention) under the right to freedom of expression is widely explained in cases investigated by the European Court of Human Rights (further – the Court)⁵. The Convention does not differentiate right to freedom of expression by the communications channel. Council of Europe has published case book about the milestone decisions on application of principle of freedom of expression.

At the same time it is worth to mention specific legal studies, which investigated the applicability of the principle to the internet. *Rikke Frank Jürgensen* reviewed (Jürgensen, 2001) European tendency towards self-regulation and initiatives related to rating, filtering and codes of conduct, which is *de facto* leading towards censorship. Moreover, he urges to take on responsibility and strengthen the protection of freedom of expression on Internet. *Tania Groppi* described (Groppi, 2003) freedom of thought and expression according to the practice in several Southern European countries, compared it to the position of the Court.

At least for comparative purposes it is worth to mention works by American scholars. Out of several competing pieces it is possible to name *William Cohen's* book on the First Amendment.

⁵ The full list of cases is available online: <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>.

Legal cases in the Baltic States

The Constitutional Court of Republic of Lithuania has issued a controversial decision in “kavkazcenter.com” trial⁶ on September 19th, 2005. The ruling defines two separate regimes for regulating the content of mass media:

1. The Law on the Provision of information to the public;
2. The system created by the Republic of Lithuania Law on Police Activities, the Republic of Lithuania Law on Operational Activities and Resolution of the Government of the Republic of Lithuania no. 290 “on the Confirmation of the procedure for control of information not to be divulged to the public and dissemination of limited public information stored in public use computer networks”.

According to the opinion of the Court internet medium in general and internet portals in particular are not regulated by the Law on the Provision of information to the public. Therefore the content of internet is regulated by the second regime.

⁶ The legal dispute started when Lithuania's State Security Department closed the pro-Chechen website kavkazcenter.com after coming under intense pressure from the Kremlin. Lithuanian officials initially balked at the request, saying that a court ruling was required to shut down the website, but Lithuanian Prime Minister Algirdas Brazauskas changed course on September 17th, 2003 and echoed the Kremlin's criticism of the website after kavkazcenter.com posted a statement by Chechen rebel commander Shamil Basayev claiming responsibility for a deadly hostage-taking operation in southern Russian town of Beslan that killed some 330 people on September 3. The dispute centered about whereas a court ruling was necessary, who is entitled to decide which content is appropriate or not.

On the contrary, Liudvika Meškauskaitė questions (Meškauskaitė, 2004) such position and its application for internet websites because equals them to “mass media”. Internet, including internet portals, is “a mean to provide information to the public” (in Lithuanian “*visuomenės informavimo priemonė*”), whereas the Resolution Nr. 290 is not in line with the Constitution due to the wrong legal form (according to the Convention the execution of main human rights – including the content of mass media – should be regulated by laws).

Second case is named after the charged Estonian citizen – Olev Hannula. He has posted a comment *juudid ahju*⁷ in *www.delfi.ee* internet portal. The court of first instance has decided that Mr. Olev Hanula acted against the law and stated that such comment should be evaluated as against the general order. The discussion was based around two principles:

- Free speech, freedom of expression, a right to comment;
- Public order, tolerance.

Mr. Olev Hanula has filed an appeal, but it was also rejected in September 2005. It is interesting, that police refused to start the same process against the author, who posted similar message against “Arabs”. Mr. Olev Hanula has filed a complaint for a local police, but it denied further investigation due to the fact, that a word “Arab” is not related to the race.

Legal regulation

The process of regulating mass media is very intensive in Lithuania. According to the database of Lithuanian Parliament⁸, the Law on

the Provision of information to the public was amended or completely new edition adopted 19 times⁹ during the period from 1996 till now.

The Lithuanian Law uses the paradigm of “media” (lith. *visuomenės informavimo priemonė*). It is defined as books, newspapers, journals, bulletins or other publications, television and radio programs, film and other sound or visual studio productions and other means of public dissemination of information. In accordance with the Law, technical and office documents as well as securities are not ascribed to the media. This paradigm is equally applied to any mean of public dissemination of information, which suffices defined requirements:

- Public – access is not restricted;
- Dissemination of information – the content should be intended for public dissemination; moreover, this definition excludes information which cannot be considered as public information under the laws of the Republic of Lithuania.

Before mentioned decision of the Constitutional Court of the Republic of Lithuania has overturned general understanding of the legal regulation scheme of internet content and at the same time – internet portals. The Court relied on the paradigm of “electronic media for provision of information to the public” (lith. *elektroninė visuomenės informavimo priemonė*) used by the Resolution of Lithuanian Government.

Lithuanian parliament has started the working group in February 2005 to create a new edition of the Law on Provision of information to the public. The main task for a group was to investigate all the developments in the mass media and propose appropriate legal changes in order to adapt the Law to the new

⁷ Approximate translation could be “Jews onto the fire”.

⁸ Online version available at <http://www3.lrs.lt/DPaieska.html>.

⁹ Re-edited versions are available at <http://www3.lrs.lt/cgi-bin/preps6?Condition=29884>.

social environment. The group successfully finished the draft version in June 2005. Although a lot of issues were discussed in the working group, but the main attention was paid to the problems related to electronic media, in particular – internet. The new edition of the Law is mainly based on the system of EU e-commerce directive, the paradigm of internet service providers and the principle of “notice-and-take down” procedure. It is possible to define three circumstances¹⁰ under which responsibility is waived for internet service providers (and most often – owners or managers of internet portals):

- a) Mere conduit (the user acts independently);
- b) Caching (technology used for speeding up communications);
- c) Hosting (service is not related to any form of content review).

According to Ingus Berzins, chief editor of *www.delfi.lv*¹¹, the Latvian Republic Law on Press and Other Media is passed in 1990 and is still practically unchanged in Latvia. It regulates mainly print media, whereas another law regulates TV and radio (broadcasting).

Latvian law does not specifically include anything about internet media. However, internet media is not stated in laws, three leading portals often use statement “even without stipulating by law, we use the same principles as press in our editorial content policy – no porno, no abuse, fact checking, etc...” in the public discourse.

www.delfi.lv has been constantly asking le-

gislators to change the Law for several years due to two main reasons:

- internet portals do act as traditional media, so inclusion can not be harmful;
- internet portals seek legislator to stipulate, that internet media has *user created content* (UCC), which is only internet phenomenon, and law must say, that editorials can not be responsible for UCC.

Latvian Transport and information ministry drafted changes for the Law in 2003. Initiative dealt with internet media inclusion due to EU *acqui* requirements on measures against child pornography. *www.delfi.lv* presented its point of view for the ministry to make sure internet media will not become responsible for UCC. The position was mainly based on the VIth Principle of Council of Europe Declaration on freedom of communication on the Internet. The draft version of the changed law included *www.delfi.lv* proposals, which proposed:

- a) [*Mass media in terms of this law is*] (...) internet newspapers, internet magazines, internet portals, other electronic media (with registered or free access), which are intended to be spread in society, using the web;
- b) This law does not regulate electronic media, which only:
 - a. Publishes information related to the resource owner¹², excluding websites of political organizations;
 - b. Publishes information about goods and services;
 - c. Provides possibility to communicate and share opinions¹³;

¹⁰ They are all indirectly related to EU electronic commerce Directive and its Section 4 “Liability of intermediary service providers”.

¹¹ Based on e-mail interview with Ingus Berzins, June 13th, 2005.

¹² In Ingus Berzins opinion, this exception is dedicated for personal websites.

¹³ In Ingus Berzins opinion, this exception is dedicated for chat rooms.

- d. Provides possibility to search information;
- c) Media is not responsible for opinions, which are made by persons, to whom media has provided the possibility to share opinions.

Such measures would have solved three questions:

- Inclusion of internet media to the law;
- Separating internet media from other internet resources;
- Waived internet media responsibility for UCC.

Unfortunately, the Draft was rejected by the Latvian Government. According to the latest information (as available on October 14th, 2005) the Draft is still kept in the Parliament, but it has only those features, which do not anything to deal with internet media. Therefore Latvia has no such a law, which could be used to look for the answer about the subjects responsible for the internet media. Up till now *www.delfi.lv* usually provides any related information (IP numbers, exact database records, etc.) under the police order and stay apart from the legal processes.

According to Mart Pukk¹⁴, chief editor of *www.delfi.ee*, internet media and other private enterprises are regulated by general Estonian legislation. Broadcasting law regulates only the work of Estonian Radio and Television stations. Informal opinions from Raivo Palmaru, Minister of Culture, also report, that there is no political will to work out any special law to regulate that kind of media.

Conclusions

Although the Constitutional Court of Lithuania has left almost no room for further legal discussion, nevertheless European regime for media regulation is open for the discussion. The regulation scheme designed by the Convention and its implementation is clear for a general media, but cases in the internet are not available. Nonetheless first legal discussions are starting and it is a matter of time, when they reach courts.

According to the information gathered from the defined information sources and using the data from the legal regulation overview it is possible to define the main areas for future investigation. As yet the most important issues to be dealt with in the area of internet media are:

- The subject legally responsible for an act in question, separation or division of responsibility between author, editor and owner of an internet portal;
- The status of user created content, intellectual property issues (ownership) and applicability of pan-European legislation on a local scale;
- Applicability of the principles of free speech, freedom of expression in internet portals, especially – relation to the right to comment.

To conclude with, it is essential to make sure that freedom of expression is safeguarded in the digital age, where convergence erases borders between old and new technologies, where changes provide new opportunities, but new threats make it necessary to draw a clear line dividing issues into beneficial and dangerous for the society.

¹⁴ Based on e-mail interview with Mart Pukk, June 13th, 2005.

REFERENCES

- COHEN, William (2005). *The First Amendment: Constitutional Protection of Expression and Conscience (University Casebook)*. Chicago. ISBN 1587784610.
- MEŠKAUSKAITĖ, Liudvika (2004). *Žiniasklaidos teisė*. Vilnius: Litlex. ISBN 9955-557-32-X.
- Council of Europe: Freedom of Expression in Europe: Case Law Concerning Article 10 of the European Convention on Human Rights (Human Rights Files). Bruxelles, 2002. ISBN 9287148791.
- GROPPI, Tania (2003). *Freedom of thought and expression* [interactive]. Ankara: Union of Turkish Bar [viewed 2005-11-18]. Access through the Internet: <http://www.unisi.it/ricerca/dip/dir_eco/COMPARATO/groppi4.doc>.
- JÜRGENSEN, Rikke Frank (2001). *Internet and Freedom of Expression* [interactive]. Lund: Raoul Wallenberg Institute [viewed 2005-11-18]. Access through the Internet: <<http://www.digitalrights.dk/DRfile66.htm>>.
- PEČIŪRA, Linas (2000). *Istorijos karštais pėdsakais pasekus* [interactive]. Vilnius: LRT IT žurnalas “@ETA” [viewed 2005-11-18]. Access through the Internet: <<http://www.hot.lt/archive/linas.htm>>.
- Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocol No. 11) [interactive]. Rome: Council of Europe, 1950 [viewed 2005-11-18]. Access through the Internet: <<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>>.
- Declaration on freedom of communication on the Internet [interactive]. Strasbourg: Council of Europe, 2003 [viewed 2005-11-18]. Access through the Internet: <http://www.legi-internet.ro/lib_com.htm>.
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [interactive]. Bruxelles: Official Journal, 2000 [viewed 2005-11-18]. Access through the Internet: <<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML>>.
- Lietuvos interneto svetainių lydere išlieka DELFI [interactive]. Vilnius: interneto portalas “Delfi”, 2005 [viewed 2005-11-18]. Access through the Internet: <<http://www.delfi.lt/news/economy/Media/article.php?id=7901412>>.
- Lietuvos Respublikos Seimo Valdybos sprendimas Nr. 91 „Dėl darbo grupės Visuomenės informavimo įstatymo naujai redakcijai parengti sudarymo“, 2005 [viewed 2005-11-18]. Access through the Internet: <<http://www3.lrs.lt/cgi-bin/preps2?Condition1=256770>>.
- Lietuvos Respublikos Vyriausybės nutarimas Nr. 290 “Dėl Viešo naudojimo kompiuterių tinkluose neskelbtinos informacijos kontrolės ir ribojamos viešosios informacijos platinimo tvarkos patvirtinimo”, 2003 [viewed 2005-11-18]. Access through the Internet: <<http://www3.lrs.lt/cgi-bin/preps2?Condition1=236105>>.
- Полиция безопасности Эстонии отказалась преследовать за призыв к уничтожению арабов [interactive]. Москва: информационное агентство REGNUM, 2005 [viewed 2005-11-18]. Access through the Internet: <<http://www.regnum.ru/news/255179.html>>.
- Populiariausios interneto svetainės Lietuvoje [interactive]. Vilnius: e-žurnalas “ApieReklama.lt”, 2005 [viewed 2005-11-18]. Access through the Internet: <<http://www.apiereklama.lt/36.html>>.
- The Constitutional Court of the Republic of Lithuania ruling on the compliance of items 12, 14 and 16 of the procedure for control of information not to be divulged to the public and dissemination of limited public information stored in public use computer networks as confirmed by Resolution of the Government of the Republic of Lithuania no. 290 „on the Confirmation of the procedure for control of information not to be divulged to the public and dissemination of limited public information stored in public use computer networks“ of March 5th, 2003 with the Constitution of the Republic of Lithuania and paragraph 1 (wording of August 29th, 2000) of Article 53 of the Republic of Lithuania Law on the Provision of information to the public [interactive]. Vilnius: Lietuvos Respublikos Konstitucinis Teismas, 2005 [viewed 2005-11-18]. Access through the Internet: <<http://www.lrkt.lt/dokumentai/2005/r050919.htm>>.
- The Law on Operational Activities [interactive]. Vilnius: Lietuvos Respublikos Seimas, 1997 [viewed 2005-11-18]. Access through the Internet: <<http://www3.lrs.lt/cgi-bin/preps2?Condition1=123795>>.
- The Law on Police Activities [interactive]. Vilnius: Lietuvos Respublikos Seimas, 2000 [viewed 2005-11-18]. Access through the Internet: <<http://www3.lrs.lt/cgi-bin/preps2?Condition1=257974>>.
- The Law on the Provision of information to the public [interactive]. Vilnius: Lietuvos Respublikos Seimas, 1996 [viewed 2005-11-18]. Access through the Internet: <<http://www3.lrs.lt/cgi-bin/preps2?Condition1=238746>>.
- Visuomenės informavimo įstatymo pakeitimo įstatymo projektas (nauja redakcija) [interactive]. Vilnius: Lietuvos Respublikos Seimas, 2005 [viewed 2005-11-18]. Access through the Internet: <<http://www3.lrs.lt/cgi-bin/preps2?Condition1=258746>>.

TEISINĖS BALTIJOS ŠALIŲ INTERNETO PORTALŲ PROBLEMOS

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Santrauka

Sparčiai besiplėtojančios technologijos praktiškai neleidžia laiku priderinti galiojančių teisės normų prie žiniasklaidos veiklos internete. Tačiau atsirandančias problemas jau galima bandyti sisteminti, ieškoti galimų jų sprendimų būdų. Šio straipsnio tikslas – remiantis ekspertine didžiausio Baltijos šalių interneto portalų tinklo „Delfi“ redaktorių nuomone, galiojančių teisės aktų analize bei didelio atgarsio visuomenėje sulaukusių teisinių kazusų tyrimais išskirti pagrindines žiniasklaidos teisės raidos tendencijas, išryškinti besiformuojančias teisinio reguliavimo problemas. 2005 metų rugsėjo 19 dienos Lietuvos Respublikos Konstitucinio teismo spren-

dimas iš esmės pakeitė Lietuvoje priimtą „visuomenės informavimo priemonės“ sampratą, todėl straipsnyje mėginama analizuoti susidariusią padėtį, nagrinėjama teismo pozicija ir lyginama su susiklosčiusia Europos Žmogaus Teisių Teismo jurisprudencija žiniasklaidos bylose. Taip pat daug dėmesio skiriama Estijoje nagrinėtai Olevo Hanulos tautinės neapykantos skatinimo bylai, kurioje iš esmės diskutuota dėl saviraiškos laisvės principo taikymo elektroninėje erdvėje. Apžvelgiamos skirtingos Baltijos šalių interneto portalų problemos, bandoma jas struktūruoti ir pateikti sąlyginai integruotą sprendinių problemų sąrašą.

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